

REMARKS

The Office Action mailed March 22, 2007 considered claims 1-71. Claims 28-34 and 43 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. Claims 1-27, 35-42, and 44-71 were rejected under 35 U.S.C. 102(e) as being anticipated by *Spies et al.* (US 2005/0138353) hereinafter *Spies*.

By this paper, claims 28-34 and 43 have been cancelled. Claims 1-27, 35-42, and 44-71 remain pending in the application.

With regard to the rejection under 35 USC 101, claims 28-34 and 43 have been cancelled. As such, the rejections to those claims are rendered moot.

With regards to the rejections under 35 USC 102(e) and as communicated to the Examiner in telephonic communications on April 12 and 16, 2007, it appears that *Spies* does not qualify as prior art under 35 USC 102(e). In particular, the present application has a filing date of October 23, 2003.¹ *Spies*, on the other hand, has a filing date of December 22, 2003, a full two months *after* the filing date of the present application. 35 USC 102(e) only allows published applications to qualify as prior art when those applications are filed before the invention by the applicant. As such, *Spies* does not qualify as prior art under 35 USC 102(e) for the present invention.

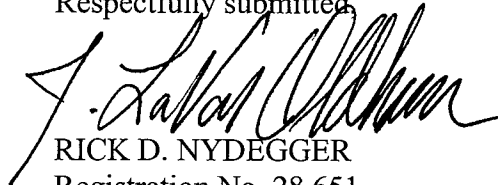
In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

¹ While the October 23, 2003 filing date is being relied upon to overcome the classification of *Spies* as prior art under 35 USC 102(e), it is worth noting that the present application includes priority claims to applications filed as early as October 16, 2001.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 22nd day of June, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Nydegger", written over the typed name.

RICK D. NYDEGGER
Registration No. 28,651
J. LAVAR OLDHAM
Registration No. 53,409
Attorneys for Applicant
Customer No. 47973

RDN:JLO:crb
CRB0000005097V001